

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOHN P. LAURANGE,

Plaintiff,

v.

9:12-CV-0399
(GTS/RFT)

MICHAEL A. PATTERSON, et al.,

Defendants.

APPEARANCES:

OF COUNSEL:

JOHN P. LAURANGE
#460653
Plaintiff, pro se
Central New York Psychiatric Center
P.O. Box 300
Marcy, NY 13403

HON. ERIC T. SCHNEIDERMAN
New York State Attorney General
Attorney for Defendants
The Capitol
Albany, NY 12224

CHARLES J. QUACKENBUSH, ESQ.
Ass't Attorney General

GLENN T. SUDDABY
United States District Judge

DECISION and ORDER

I. INTRODUCTION

Currently before the Court, in this pro se civil rights action filed by John P. Laurange, is a letter from plaintiff in which he states his intention to discontinue this action. Dkt. No. 33. For the reasons set forth below, plaintiff's request for voluntary dismissal is granted, and this action is dismissed without prejudice.

II. RELEVANT BACKGROUND

Plaintiff filed his complaint in this action in March, 2012, asserting claims arising out of his confinement at Central New York Psychiatric Center ("CNYPC"). See *generally* Dkt. No.

1. More specifically, plaintiff alleges that in 2011, he was assaulted and battered by the defendants, identified as "Secure Care Treatment Aides" at CNYPC.

An answer to the complaint was filed on behalf of the defendants in September, 2012. Dkt. No. 16.

As set forth in the Mandatory Pretrial Discovery and Scheduling Order, the discovery completion date was set for March 21, 2013; the dispositive motion filing deadline is June 20, 2013. See Dkt. No. 17.

III. DISCUSSION

Rule 41(a) of the Federal Rules of Civil Procedure provides that after an answer or motion for summary judgment has been filed, an action shall not be dismissed at the plaintiff's request except where all parties agree to a stipulation of dismissal, or upon order of the court. Fed. R. Civ. P. 41(a)(1)(B); 41(a)(2). The Rule further provides that unless the stipulation or order states otherwise, the dismissal is without prejudice. *Id.*¹ The decision whether to grant a Rule 41(a) motion for voluntary dismissal lies within the sound discretion of the court, *Catanzano v. Wing*, 277 F.3d 99, 109 (2d Cir. 2001), and is to be ordered "on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2).

¹ In *Banco Central de Paraguay v. Paraguay Humanitarian Found., Inc.*, No. 01 Civ. 9649, 2006 WL 3456521 (S.D.N.Y. Nov. 30, 2006), the court explained, "Although voluntary dismissal without prejudice is not a matter of right, the presumption in this circuit is that a court should grant a dismissal pursuant to Rule 41(a)(2) absent a showing that defendants will suffer substantial prejudice as a result." *Id.* at *6 (citations omitted).

By his letter dated February 23, 2012, plaintiff states in relevant part: "I am not pursuing this case any longer." Dkt. No. 33.

In response to plaintiff's letter, defendants' counsel advised that defendants "have not presented any counterclaim and will consent to the discontinuance." Dkt. No. 34. Counsel undertook to prepare a stipulation of dismissal which, when executed, would be filed with the Court in accordance with Rule 41(a)(1)(A)(ii). *Id.* On April 15, 2012, counsel advised the Court that the signed stipulation had not been returned to him by plaintiff. Dkt. No. 36.² Counsel further advised that defendants consent to the dismissal of this action without prejudice. *Id.* at 1.

Based upon the foregoing, plaintiff's request for voluntary dismissal of this action is granted.

IV. CONCLUSION

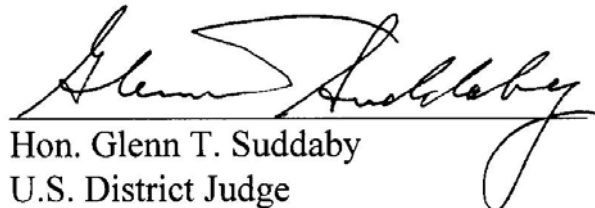
WHEREFORE, it is hereby

ORDERED that plaintiff's request to dismiss this action (Dkt. No. 33) is **GRANTED** and this action is hereby **DISMISSED without prejudice** pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure; and it is further

ORDERED that the Clerk of the Court shall serve a copy of this Order on the parties.

IT IS SO ORDERED.

Dated: April 19, 2013
Syracuse, NY


Hon. Glenn T. Suddaby
U.S. District Judge

² Plaintiff has not communicated with the Court regarding this matter since his February, 2013 letter.